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No. 7] NEW DELHI, SATURDAY, FEBRUARY 12, 1994/MAGHA 23, 1915

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii) PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों के छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than Administrations of Union
Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 25 जनवरी, 1994

का.आ. 14—निर्वाचन आयोग 1991 की निर्वाचन प्रती
सं. 1 में तारीख 07-07-1993 का मद्रास उच्च न्याय क्षेत्राधिकार का
निर्णय लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा
106 के अनुवर्ण में इसके द्वारा प्रकाशित करता है।

[सं. 82/तन्-सो/सं. 1/90-93]

आदेश से,
बलवंत सिंह, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 25th January, 1994

O.N. 14.—In pursuance of Section 106 of the Representa-
tion of the People Act, 1951 (43 of 1951), the Election
Commission hereby publishes the Judgment of the High
Court of Judicature at Madras dated 2-7-1992 in Election
Petition No. 1 of 1990.

[No. 82/TN-HP/1/90-93]

By order
BALWANT SINGH, Secy.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Original Jurisdiction)

Thursday, the 2nd day of July, 1992

The Hon'ble Mr. Justice Govindasamy.

Election Petition No. 1 of 1990

Thanga Maruthanauthu

.. Petitioner

Vs.

1. L. Adaikalaraj
2. The Returning Officer and
District Collector,
No. 27, Tiruchirapalli
Parliamentary Constituency,
Collectorate, Tiruchirapalli.
3. P. G. Harirao
4. A. Arockiasamy
5. P. Kathiresan
6. R. Thathu Adaikkappattar
7. Srimati R. Packiam
8. M. Balasubramanian
9. A. S. M. Mariyanallu
10. T. K. Rengarajan
11. E. Velusamy

.. Respondents.

Election Petition under Sections 80 and 81 read with Sections 9-A, 123(1) (A) (a), (5), (6), 127-A and 130(1)(e) of the Representation of the People Act, 1951 praying for an order (1) to declare that the election of the returned candidate, the first respondent, is void; and (2) to set aside the election.

This Election Petition coming on for hearing before this Court on Monday the 9th, Tuesday the 10th, Wednesday the 11th and Thursday the 26th days of March 1992 and Thursday the 9th day of April, 1992; upon perusing the Petition, the affidavit of the Petitioner, the counter statements of the first and second Respondents and the reply statement of the Petitioner; upon hearing the evidence adduced; upon perusing the documents marked and upon hearing the arguments of Mr. V. Sitharanjandas, Advocate for the Petitioner, of Mrs. Nalini Chidambaram, Senior Counsel for Messrs Vijay Narayanan and R. Parthiban, Advocates for the first Respondent and of Mr. P. Rajamanickam, Government Advocate, on behalf of the second Respondent and Respondents 3 to 11 not appearing in person or by Advocate and having stood over for consideration till this date, the Court delivered the following Order :—

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Thursday, the 2nd day of July, 1992

Coram

The Honourable Mr. Justice Govindasamy.

Election Petition No. 1 of 1992

Thanga Maruthamuthu

Petitioner

Vs.

1. L. Adaikalaraj

2. The Returning Officer and District Collector, No. 27, Tiruchirapalli Parliamentary Constituency, Collectorate, Tiruchirapalli

3. P. G. Harirao

4. Arokiasamy

5. P. Kathiresan

6. Thathu Adaikappattar

7. Smt. R. Packiam

8. M. Balasubramanian

9. A. S. M. Mariyanallu

10. T. K. Rangarajan

11. E. Vellunuswami

Respondents

For Petitioner—Mr. V. Sitharanjandas.

For 1st Respondent—Mrs. Nalini Chidambaram for M/s. Vijay Narayan and R. Parthiban.

For 2nd Respondent

ORDER

The election petition is filed by one of the contested candidates under Sections 80 and 81 of the Representation of the People Act, 1951, to declare that the election of the returned candidate, viz., L. Adaikalaraj, the first respondent herein, is void and to set aside the election.

2. The petitioner, the said Adaikalaraj and ten others were the candidates contested in the parliamentary election for the 9th Lok Sabha for the Tiruchirapalli Parliamentary Constituency No. 27. The polling for the Parliamentary Constituency was held on 24-11-1989 and the counting took place on 26-11-1989. The result of the election was declared on 27-11-1989 by the Returning Officer and District Collector of Tiruchirapalli Parliamentary Constituency, Collectorate, Tiruchirapalli, the second respondent herein and that the first respondent was declared elected to be the Member of the Parliament of India from the aforesaid constituency

as he had secured the highest number of votes viz., 4,29,185, whereas others had secured less than what the first respondent had secured, the details of which were set out in paragraph 3 of the election petition.

3. The petitioner had stated that on the date of nomination, the first respondent was disqualified under Section 9-A of the Representation of the People Act, 1951 (hereinafter referred to as the Act) as he had interest in contracts with Southern Railway, Tiruchirapalli Division in civil works, supply of goods to Government Department—Ordnance Factory, Tiruchirapalli, providing service to Government Organisation Oil and Natural Gas Commission, Nariman Project, contract in Blue Metal Mines with Government of Tamil Nadu and Cinema Theatre lease with Government of Tamil Nadu as detailed in Schedule I to the election petition. The petitioner has further stated that the returned candidate, L. Adaikalaraj, was a tenant under Southern Railway of non-residential building near Railway Protection Force Station at Tiruchirapalli Junction and also had a telephone installed in the said demised premises, and that the first respondent had housed therein his office of railway contract. It was stated that the first respondent had put up a thatched pandal in front of the said building and conducted election office. The petitioner further stated that because of the first respondent made an appeal to the Brahmin electors to vote for the first respondent and had published a statement in newspapers that Brahmins agreed to support the first respondent on the grounds of race, community and religion, and these statements were made to incite and excite communal sentiments of the voters prejudicing the free and fair election. These publications and statements were calculated to prejudice the prospects of the petitioner's election and had actually resulted in a large number of voters being misled and not exercising their franchise in freewill. The petitioner had further stated that the first respondent had committed corrupt practice of bribery by offering and paying Rs. 10,000 to each of the two independent candidates, viz., A. Arokiasamy and A. S. M. Mariyanallu, to declare themselves as retired in favour of the first respondent and that the first respondent not appointed Cong-I Party District Office bearers as election agents of the said retired candidates to promote his prospects stealing a march over other candidates. Ka. Sivaraj, the dummy candidate for the first respondent from Cong-I Party withdrew his nomination and had been appointed as election agent for A. Arokiasamy, an independent candidate. One S. Selvaraj, one of the office bearers of the District Secretaries of Cong-I Party, had been appointed as election agent for A. S. M. Mariyanallu, an independent candidate.

4. The petitioner further stated that the first respondent had committed the corrupt practice of bribery by offering and paying Rs. 10,000 to an independent candidate, R. Thathu Adaikappattar and Suba Somu, President of Cong-I Party Youth Wing Tiruchirapalli, was appointed as an election agent for him. It is stated that the first respondent had pressed into his service four election agents and that the election agents and their numerous polling agents flooded the polling booths all over the constituency and did over-reaching work. It is stated that they themselves collected ballot papers from electors and cast them in favour of the first respondent with a view that the said votes may not be cast and dropped by the electors in favour of the petitioner.

5. The petitioner has further stated that the first respondent far exceeded the prescribed maximum limit of the election expenses and had committed the corrupt practices as had failed to keep accurate and correct account of all expenditures incurred by him in connection with the election and that the election returns lodged by him were false in material respects.

6. The petitioner has further stated that the first respondent and his agents and workers hired and procured vehicles for the conveyance of the electors to the polling stations and back to their places and thereby committed the corrupt practice. This act of the first respondent greatly enhanced the prospects of the first respondent at the said election, thereby negating the free and fair poll. The petitioner has also stated that the first respondent his agents and workers with his consent had committed the electoral offence specified in Section 130(c) of the Act by distributing booth slips to the electors with hand sign (election symbol of the first

respondent) issued at Government Higher Secondary School, Laigudi Polling Station. The first respondent had committed electoral offence by publishing election pamphlets or posters to promote his election prospects. The first respondent, in order to promote his election prospects, published an advertisement in the newspaper publishing a letter allegedly written by a matinee idol Rajinikanth and it was aimed at deceiving the fans of Rajinikanth into voting to the first respondent; (ii) National Students Union of India had distributed election pamphlets in favour of the first respondent without printer's name; (iii) canvassing votes for the first respondent by giving a full page advertisement, which was published in Dhinamalar dated 19-11-1989, with the information that the public meeting of Selvi Jayalalitha would be held on 19-11-1989.

7. Election pamphlet said to have been issued by K. C. M. Sami was published in favour of the first respondent. The first respondent himself made advertisements in Dhinamalar dated 5-11-1989, 23-11-1989 and 24-11-1989 appealing to cast votes in his favour.

8. The petitioner had made complaints before the Revenue Divisional Officer and Returning Officer on 10-11-1989 for violation of existing laws. It is stated that during the scrutiny of nomination papers, the petitioner objected to the candidature of the respondent as he was then a Member of Parliament and that objection was erroneously rejected. Likewise, the petitioner made a complaint on 23-11-1989 in the presence of the State Observer of Election against the first respondent to the second respondent regarding the violation of the existing laws. It is also stated that the petitioner has sent a telegram to the Chief Election Commissioner alleging the first respondent's statutory disqualification, violation of election laws, corrupt practices and violation of code of conduct. It is for these reasons, the petitioner has sought the declaration that the election of the returned candidate is void and to set aside the election.

9. The first respondent in his counter affidavit has stated as follows :—

The election petition lacks material facts and full particulars and contains only vague and general averments and hence it is liable to be dismissed. The first respondent was fully qualified to be elected as a Member of Parliament and the first respondent had scrupulously complied with the provisions of the Act and the Rules made thereunder and had not indulged in any act which could be a ground for declaring the election of the first respondent to be void. There was no infirmity in the election of the first respondent. The date of the election was 24-11-1989, that the first respondent was fully disqualified to be elected to the Lok Sabha on the date of the election and that there was no subsisting contract between the first respondent and the Central Government within the meaning of Section 9-A of the Act. The allegations that the first respondent had interests in contacts with Southern Railway, Tiruchirappalli Division, in execution of civil works or that he had interest for supply of goods to Government Departments Ordnance Factory, Tiruchy or that he was rendering services to O.N.G.C. Nariman Project were all denied as false. The first respondent also denied the averment that he had interest in contacts with Bala Metal Mines with Government of Tamil Nadu and lease of cinema theatre with the Government of Tamil Nadu. There was no allegation that there subsists contract within the meaning of Section 9-A of the Act. None of the contracts mentioned in the first Schedule, even if true, was a contract subsisting between the first respondent and the other party concerned. The allegation that Joseph Louis was a name-lender for the first respondent was totally false. The first respondent was not a partner, nor had he any financial interest in Rajaji Hotel. The allegation with reference to the contracts with the Tamil Nadu Government was wholly irrelevant for the purpose of election to the Lok Sabha. The allegation that the first respondent was a tenant under Southern Railway of a non-residential building near

Railway Protection Force Station at Tiruchirappalli Junction was totally incorrect and was also denied. The first respondent, as a member of the VIII Lok Sabha, was entitled to a telephone anywhere in his constituency and accordingly, he installed a telephone in a premises in the occupation of his son, A. Joseph Louis in Tiruchy Junction that the first respondent denied his tenancy in respect of the premises under Southern railway. There was no relationship of tenant and landlord between the first respondent and Southern Railway in respect of any premises or the premises in which the telephone had been installed. The first respondent also denied of having any "office of railway contract" nor had he housed the alleged office in the said premises. The installation of a telephone to which the first respondent was entitled as a sitting Member of the VIII Lok Sabha in a premises in the occupation of his son, Mr. Joseph Louis, would not attract the provisions of Section 9-A of the Act. The petitioner does not disclose as to how the mere installation of the telephone would attract the provisions of Section 9-A of the Act. The said allegation was liable to be struck off under Order VI Rule 16 C.P.C. The first respondent also denied that he put up a thatched pandal in front of the railway premises and that he conducted his election office therefrom. Since there was no allegation that on the date of the election, there subsists a contract entered into by the first respondent in the course of his trade or business with the Central Government for supply of goods, the allegations made do not disclose a ground under Section 9-A read with Section 100(1)(a) of the Act.

10. The first respondent did not appeal to Brahmin voters to vote for him, and did not publish any statement in newspapers that Brahmins had agreed to support the first respondent and that the allegation that the support was on the ground of race, community and religion was irrelevant. No appeal was made and no statement was published to incite or excite communal sentiments of the voters. Nothing was done to prejudice free and fair election and the question of prejudicing the prospects of the petitioner's election or the question of a large number of voters being misled and not exercising their franchise according to their free will do not arise. Newspaper reports would not constitute evidence and that the first respondent had no connection with either of the two newspaper reports and the documents concerned were not admissible in evidence. The first respondent did not participate in any meeting of the Tamil Nadu Brahmin Association and did not tell any news men that the Tiruchy District Brahmin Association decided to support his candidature.

11. The mere allegation of "this corrupt practice" would not satisfy the requirement of law under Section 100(1)(b) read with the definition of the alleged corrupt practice in Section 123 of the Act. The first respondent denied that either he or his agents or his workers with his consent had committed any corrupt practice within the meaning of Section 123(1)(A)(a) of the Act. The first respondent that the first respondent or anyone else offered and paid Rs. 10,000 each to A. Arockiaswamy and A.S.M. Marianallu to declare themselves as retired in favour of the first respondent. There was no specific allegation whether the alleged corrupt practice of bribery was committed by the first respondent or his agent or any other person. The petitioner had not satisfied the requirement under Section 83(1)(b) of the Act. The first respondent got appointed Congress (I) Party's District Office bearers as election agents of the retired candidate to promote the first respondent's prospects was incorrect and untenable. The first respondent had no connection with the appointment of anyone as an election agent of any other candidate, who continued in the field or who had withdrawn from the contest. The first respondent was not aware of the circumstances under which either Ka. Sivaraj or S. Selvaraj were nor were not appointed as election agents of any other candidates. These allegations, admittedly, do not constitute a ground under Sec. 100 of the Act read with any other appropriate provision of law to declare the first respondent's election as void. The first respondent stoutly denied that the first respondent or anyone offered

or paid Rs. 10,000 to R. Thathu Adaikkapattar and that the first respondent was not aware of the circumstances under which Suba Somu was appointed as an election agent of Thathu Adaikkapattar. These averments were irrelevant and unnecessary and would not constitute a ground to declare the first respondent's election as void under Sec. 100 of the Act. The first respondent also denied the averment that each election agent had appointed polling agents and that the first respondent had pressed into his service four election agents, including his agent. The first respondent was entitled to appoint one election agent and accordingly appointed one Swamikan as his election agent and that the first respondent had no concern with any other person who might or might not have been appointed as election agent or any other candidate. The first respondent also denied the averment that the first respondent's election agent and polling agents flooded the polling booths all over the constituency and did over-reaching work and also denied that the election agents collected ballot papers from electors and cast them in favour of the first respondent and dropped them into the ballot boxes. The first respondent also denied the allegation that the voters who were actually not prepared to vote for the first respondent were compelled to cast their votes in favour of the first respondent. The petitioner had not furnished any particulars in this behalf. The petitioner denied the allegation that the first respondent had exceeded the prescribed maximum limit of election expenses or that he had committed a corrupt practice as stipulated in Sec. 123(6) of the Act. The first respondent had complied with Sec. 78 of the Act by lodging an account of all election expenses with the District Election Officer. The particulars given in Schedule II of the petition are contrary to the facts and figures mentioned in the statement of accounts submitted to the Returning Officer or the District Election Officer. The list of vehicles engaged by the first respondent have been mentioned in the accounts submitted by the first respondent to the Collector and that the first respondent had not incurred any expenses other than the expenses mentioned in the statements of accounts and that the figures given by the election petitioner were only imaginary and, therefore, the allegation in this behalf had to be rejected. There was no statement that the first respondent had incurred or authorised any expenditure in contravention of Sec. 77 of the Act. The first respondent also denied that the first respondent or his agents and workers hired or procured vehicles for conveyance of voters to the polling stations and thereby committed a corrupt practice. The facts specified in Schedule III were all false. The first respondent had not hired any of the vehicles mentioned in Schedule III and that the photographs filed by the petitioner do not in any manner establish that the first respondent had hired or procured vehicles for the conveyance of any voter. The first respondent also denied the averment that there had been non-compliance with the provisions of the Representation of the People Act, 1951, Rules and Orders made therein. The allegation that there was a breach of the existing laws was also denied as false and there was no reference to the provisions of the Act or the Rules of the orders of the laws which have been allegedly violated. The first respondent has also stated that the averments made in respect of matters relating to Schedules IV, V and VI of the petition were irrelevant. There was no allegation that the acts alleged therein constituted non-compliance with the provisions of the Constitution or of the Act. The acts mentioned in Schedules IV, V and VI would not constitute a ground for setting aside the election. The first respondent, his agents and workers did not commit any electoral offences specified in Sec. 130(e) of the Act, by distributing booth slips to the electors with hand sign. There was no allegation that the result of the election had been materially affected by violation of Sec. 130(e) of the Act. In the absence of any allegation or averment that the result of the election had been materially affected, the entire averments in ground (b) were irrelevant and untenable. The first respondent had not published any of the items mentioned in sub-paragraphs (i) to (vii) and none of these documents would amount to an election pamphlet or poster. Assuming any or all of them would fall within the meaning of election pamphlet or poster, no facts have been alleged to show that there had been any violation of Sec. 127A of the Act. The first respondent had no connection whatsoever with the election pamphlet mentioned in sub-paragraphs (ii) or (iv) and that the first respondent was not aware of

the circumstances under which the said election pamphlet, if any, was printed and distributed. Assuming that the petitioner had alleged the ingredients in Sec. 127-A, it would still not constitute a ground for setting aside the election. In the absence of any allegation that as a result of the alleged offences under Sec. 127-A, the result of the election had been materially affected, ground (i) was liable to be struck off. The first respondent averred that the election of the first respondent was perfectly legal and valid and there was absolutely no merit in the election petition.

12. The second respondent in his counter affidavit stated as follows : The General Elections to the Lok Sabha from No. 27 Tiruchirapalli Parliamentary Constituency was held on 24-11-1989. The Collector of Tiruchirapalli was the Returning Officer for the said constituency. 20 candidates filed their nominations. After scrutiny, there were 20 candidates. Thereafter, nine candidates withdrew their candidature, leaving 11 candidates in the field. The election petitioner, Thanga Maruthamuthu contested the election as an independent candidate with symbol 'Peacock'. The first respondent, L. Adaikalaraj contested the election as a candidate affiliated to the Indian National Congress Party with the symbol 'Hand'. The other respondent contested in their respective symbols allotted to them. The result of the election was announced declaring that the first respondent was duly elected as he had polled the highest number of votes among the contesting candidates. The first respondent secured 4,29,185 votes and that the election petitioner, among others, secured 807 votes. The second respondent denied the various averments raised by the petitioner in the election petition in 4(a) to 4(i). The petitioner had not raised any objection with reference to the subsisting contract by the first respondent with the Government at the time of the acceptance of the nomination and if at all, the petitioner had any objection, he should have made it at the time of acceptance of the nomination paper and having failed to do so at that point of time, the petitioner was estopped from raising the same now. As the first respondent's nomination was found in order, it was accepted by the second respondent. The corrupt practices said to have been adopted by the first respondent does not in any way concern the second respondent. There were no restrictions with reference to the appointment of persons as election agents, except who were disqualified under the Constitution of India or under the Act, from being a member of either House of Parliament or either House of a Legislature of a State or for voting at elections. In so far as No. 27, Tiruchirapalli Parliamentary Constituency was concerned, the appointment of election agents by various candidates was done according to the provisions of the Act. The allegation that the first respondent pressed into service the election agents of the independent candidates was not correct. No incident was ever reported from any polling station in this respect. The elections were free and fair and the allegation that the election agents and the numerous polling agents flooded into the polling booths all over the constituency, collected ballot papers from electors and cast them in favour of the first respondent was denied. The second respondent also denied the allegation that the voters who were actually not prepared to vote for the first respondent were also in this manner compelled to cast their votes in favour of the first respondent. The polling was peaceful and the voters exercised their franchise freely without any fear or compulsion whatsoever. The election expenses account submitted by the first respondent had been forwarded to the Election Commission of India as per the rules. The second respondent had no personal knowledge about the first respondent providing free conveyance to the electors to the polling station and back and no complaint had been made in this behalf. The second respondent had no knowledge about the electoral offences said to have been committed by the first respondent attracting the provisions of Sec. 130(e) of the Act. The petitioner submitted a complaint to the second respondent and the Revenue Divisional Officer on 10-11-1989 mainly about raising of arches in the Highways road allegedly put up by the first respondent. The second respondent then instructed the Revenue Divisional Officer, Police Officials and the Highway authorities under his control to take prompt action in this regard. On verification, the said complaint was found to be not true. Arches were found to be not obstructing the highway and no complaint had been received from the public or from

any other contesting candidates about the hindrance that the arches were causing nuisance to the public. The complaints were not in respect of any electoral offences, but it was in respect of arches said to be obstructing the highway and causing nuisance to public. The petitioner had also raised an objection at the time of scrutiny of the nomination that the first respondent was not qualified to stand for the election as he was a sitting Member of Parliament, on the date of his nomination and that the second respondent over-ruled the objection as it lacked substance. Under the Act, the first respondent was found fully qualified to stand for elections and that his nomination was found to be in order and hence the same was accepted. Though the petitioner filed a complaint, styling it as an election petition, on 23-11-89, as the second respondent was not competent to entertain and adjudge an election petition, the second respondent had not acted upon the same and that the petitioner was advised to file the same before the High Court. The entire election process was done with great care and caution and that the conduct of the election rules were scrupulously followed. There were observers or the Election Commission of India drawn from the State and the Central Cadre and there was absolutely no complaint whatsoever from any quarters. As the first respondent had secured highest number of votes among other contesting candidates, the first respondent was declared elected. The entire election process including the counting of votes had been done strictly in accordance with the provisions of the Act and the Rules and the instructions contained in the Hand Book for Returning Officers etc. The petitioner's claims to declare the election of the first respondent as void was not sustainable and since the first respondent had secured the highest number of votes, the election of the first respondent had to be upheld.

13. In the reply statement, the election petitioner has stated as follows:—The counter statement filed by the respondent was not verified as per Order VI Rule 15 C.P.C. The averments contained in para 4 ground (a) of the Election Petition attract the provisions of Sec. 9A of the Act. The first respondent had not specifically denied that he had no interest in the various contracts specified therein. The first respondent had admitted that he had installed telephone 41155 in a non-residential building of Southern Railway. The first respondent was entitled to have his telephone only in his house or his office and not elsewhere. Installation of a telephone in a non-residential building of Southern Railway was a sufficient proof to hold that he had interest with the Southern Railway in the course of his contract works. The first respondent could not avoid the corrupt practice by merely saying that the statement contained in the newspapers could not be admissible in evidence. The first respondent could not avoid the payment of Rs. 10,000 to each of the independent candidates, by saying that the documents relating to the said transaction were not admissible in evidence. The appointment of the Congress (I) Party District Office bearers as agents for the retired candidates was a sufficient proof to hold that the first respondent had committed bribery within the meaning of Sec. 123(1)(A)(a) of the Act. The election returns filed by the first respondent with the second respondent, was contrary to the actual expenses incurred by him. The details of expenses incurred by the first respondent were set out in Schedule II on different heads. The question of striking out the averments contained in ground (e) of the election petition does not arise. The first respondent himself and his agents and workers hired and procured vehicles for the conveyance of the electors to the polling stations and back to their places and thereby committed corrupt practice. The details and other particulars relating to the places of polling stations to which electors were carried and the registration Nos. of the vehicles were clearly stated in Schedule 3 of the election petition. Documents 7 to 12 showing free conveyance to voters. The first respondent and his agents and workers had erected wooden arches on the highway causing obstruction and nuisance to the public in general. They had painted with oil paint on permanent structures belonging to Tiruchirapalli Municipality and Public Works Department. They had painted their party symbols, leaders' photos and the first respondent's name on cut outs installed on the platforms and roads against prevailing laws. Distribution of booth slips to the electors with hand sign at the polling station was contrary to the provisions of the Statute. All these documents could not be ignored by merely saying that they were inadmissible in evidence. Elec-

tion petition clearly deals with electoral offences committed by the first respondent and his workers and the details of the electoral offences committed by the first respondent. To promote his election prospects, the first respondent published advertisements in newspapers publishing a letter allegedly written by a matinee idol Rajinikanth and that the election pamphlet was distributed in favour of the first respondent, which do not bear the printer's name and that the said pamphlets were allegedly distributed by the National Students Union of India and that a full page advertisement was published in "Dinamalar" on 19th November, 1989 with the information about the public meeting of Selvi Jayalalitha on 19th November, 1989 and another advertisement in Dinamalar was published on 23rd November, 1989. The aforesaid acts are nothing by violation of existing laws and rules and that the petitioner had submitted two complaints dated 10th November, 1989 and 23rd November, 1989 to the second respondent and that the second respondent failed to take necessary action. The petitioner had also sent a telegram to the Chief Election Commissioner on 24th November, 1989 alleging the first respondent's statutory disqualification. The petitioner had stated that he had made out a case for setting aside the election of the first respondent, L. Adakalaraj to the member of Parliament of India from No. 27 Tiruchirapalli Parliamentary Constituency.

14. On the above pleadings, the following issues were framed for trial:

1. Whether the above Election Petition is maintainable in law?
2. Whether the averments in the Election Petition are liable to be struck out?
3. Whether the first respondent was disqualified from standing for election, as alleged by the petitioner?
4. Whether the first respondent was disqualified to be chosen as a Member of Parliament on the date of the election as well as nomination under Sec. 9-A of the Representation of the People Act, 1951?
5. Whether the first respondent has committed any corrupt practice as alleged by the petitioner?
6. Whether there is any irregularity in the polling process as alleged by the petitioner?
7. To what relief, if any, the petitioner is entitled?

15. Issues 1 to 4.—The general election for the 9th Lok Sabha from No. 27 Tiruchirapalli Parliamentary Constituency was held on 24th November, 1989. 20 candidates originally filed their nominations. After scrutiny, there were 20 candidates and 9 among them withdrew their candidatures, leaving 11 candidates in the field. The petitioner Thanga Maruthamuthu contested the election as an independent candidate with the symbol "Peacock". The first respondent, L. Adakalaraj contested the election as a candidate affiliated to the Indian National Congress Party with the symbol "Hand". Respondents 3 to 11 contested in the respective symbols allotted to them. After the polling was over, the counting took place on 26th November, 1989. Since the first respondent secured highest number of votes viz., 4,29,185, among all those who contested the said election, he was declared elected. The petitioner secured only 807 votes. It is in these circumstances, the petitioner has filed the above election petition challenging the validity of the election on the plea that the first respondent was disqualified to be chosen as a Member of Parliament on the date of nomination as well as on the date of election for the reason that the first respondent had subsisting contracts with Southern Railway, Tiruchirapalli Division in civil works etc., and that the first respondent had committed corrupt practice as set forth in detail in the pleadings. The first respondent raised a preliminary objection stating that the election petition is liable to be dismissed in limine and the averments contained therein are vague and lack material facts and full particulars and are liable to be struck down.

16. The first question to be considered is whether the election petition is maintainable and whether the averments in the election petition are liable to be struck down. It was the case of the petitioner that all material and relevant facts have been set forth in the pleadings as well as in Exts. P-1 to P-34 and the question of striking out the pleadings on the grounds set forth by the first respondent does not arise. In support of the above contention, learned counsel for the petitioner cited the decision, *Balwan Singh v. Lakshmi Narain*, reported in A.I.R. 1960 S.C. 770, wherein it was held that the election petition is not liable to be dismissed in limine merely because full particulars of a corrupt practice alleged in the petition are not set out. It was also held that if the Tribunal upholds the objection, it should give an opportunity to the petitioner to apply for leave to amend or amplify the particulars of the corrupt practice alleged and in the event of non-compliance with that order, the Tribunal may strike out the charges which remain vague, having regard to the fact that the pleadings in the instant case contained the entire materials and relevant facts, the allegation that the averments are all vague in nature and consequently the same is liable to be struck out, is not sustainable. Having regard to the facts pleaded in the petition, it cannot be said that the election petition is not maintainable in law.

17. With reference to the averment that the first respondent was disqualified from standing for election as alleged by the petitioner and that the first respondent was disqualified to be chosen as Member of Parliament on the date of election as well as on the date of nomination under Section 9-A of the Representation of People Act, 1951, hereinafter referred to as the Act, are concerned, the petitioner has averred that the first respondent had interest in contracts with Southern Railway, Tiruchirapalli Division in civil works, supply of goods to Government Department-Ordnance Factory, Tiruchirapalli, providing service to Government Organisation Oil and Natural Gas Commission, Narimanam Project, contract in Blue Metal Mines with Government of Tamil Nadu, as detailed in Schedule I to the election petition. It was also pleaded that the first respondent was a tenant under Southern Railway of non-residential building near Railway Protection Force Station at Tiruchirapalli Junction and also had a telephone installed in the said demised premises and that the first respondent had housed therein his office of railway contract. The first respondent denied all the averments as false and stated that the first respondent had no interest whatsoever in contracts with Southern Railway, Tiruchirapalli Division, and that he had no interest in supply of goods to Government Departments, Ordnance Factory, Tiruchy and that he was not rendering service to Oil and Natural Gas Commission, Narimanam Project. The first respondent had also denied that he had any interest in contracts with Blue Metal Mines with Government of Tamil Nadu and lease of cinema theatre with the Government of Tamil Nadu as detailed in Schedule I to the election petition.

18. It was the specific case of the first respondent that there was no allegation that there was a subsisting contract within the meaning of Section 9-A of the Act. It was also pleaded that none of the contracts mentioned in Schedule I was a contract subsisting between the first respondent and the other party concerned. In evidence, the petitioner was not in a position to substantiate that the first respondent had any subsisting contract which would disqualify the first respondent from contesting the election for the 9th Lok Sabha under Sec. 9-A of the Act.

19. Section 9-A of the Act provide that a person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government. In the instant case, the petitioner has not established that there was a subsisting contract entered into by the first respondent in the course of his trade or business with appropriate Government for the supply of goods to, or for the execution of any work undertaken. Consequently, the first respondent cannot be held to be disqualified to be chosen as a Member of Parliament on the date of the election. In view of the above, the plea of

the petitioner that the first respondent was disqualified from contesting the election is not sustainable. However, since the 9th Lok Sabha was already dissolved this issue has become academic in nature. Having regard to the facts and circumstances of the case, the plea on the part of the petitioner in this behalf is not sustainable in law. Though the petitioner has examined P.W. 2, the Chief General Engineer of Railways and P.W. 7, Special Tahsildar (Mines) in the Office of the Deputy Director of Geology and Mining, Tiruchirapalli, apart from his own evidence, to substantiate that the first respondent had subsisting contracts on the date of the filing of the nomination, he was not in a position to establish the same. The petitioner had not raised any objection with reference to the subsistence of any contract at the time of acceptance of the nomination, so as to enable the second respondent to consider the validity of the said objection. In addition thereto, M.W.2, the Assistant Returning Officer as well as the Chief Assistant Returning Officer, was examined on the side of the second respondent. It is evident that the petitioner had not objected the candidature of the first respondent on the date of nomination that the first respondent had subsisting contract as contemplated under Sec. 9-A of the Act with the concerned Government. In view of the fact that the petitioner was not in a position to establish that the first respondent had subsisting contract on the date of the nomination, the allegation in this respect is not sustainable in law. In view of the above findings, Issues 1 and 2 are answered in the affirmative and Issues 3 and 4 in the negative.

20. ISSUE No. 5 :—The petitioner has averred that the first respondent made an appeal to the Brahmin electors to vote for the first respondent and had published a statement in newspapers that Brahmins agreed to support the first respondent on the grounds of race, community and religion and these statements were made to incite and excite communal sentiments of the voters prejudicing the free and fair election. These publications and statements were calculated to prejudice the prospects of the petitioner's election and had actually resulted in a large number of votes being mislead and not exercising their franchise in free will. In reply, the first respondent has stated that he did not appeal to Brahmin voters to vote for him and did not publish any statement in newspapers that Brahmins had agreed to support him and that the allegation that the support was on the ground of race, community and religion was irrelevant. The first respondent had categorically stated that he had not made any appeal and had not made any statement published to incite or excite communal sentiments of the voters. It was also stated that nothing was done to prejudice free and fair election and the question of prejudicing the prospects of the petitioner's election on the basis of a large number of voters being misled and not exercising their franchise according to their freewill do not arise. In this connection, the petitioner marked Exts. P-2 and P-3, the publication in *Dhinamalar* dated 14-11-1989, and in the *Indian Express* dated 15-11-1989. P.W. 1 has spoken with reference to the publications made in Exts. P-2 and P-3. P.W. 1 has stated that the first respondent gave a news report in *Indian Express* saying that Brahmin Association decided to support him by which he made the Brahmin voters to support him. Similarly, it was published in Ex. P-3 also. In support of the above contention, the petitioner has examined P.W. 3, N.R. Swaminathan, who is the Manager of *Indian Express*. However, P.W. 3 has stated that he has no personal knowledge, though in chief-examination he had stated that the statement contained in Ex. P-3 was furnished by the first respondent. Since he has expressed that he has no personal knowledge, his statement that the first respondent gave the statement containing the news items cannot be accepted. The petitioner had also examined P.W. 5, Gunasekaran, who is the News Editor in *Dhinamalar Daily*. He has stated that the statement contained in the news item was given by their Correspondent. He has also stated that he has no personal knowledge about such person who has given such statement. In view of the above, the evidence of P.W. 5 is of no use to substantiate that the first respondent had given the news items in the aforesaid papers. The first respondent in his evidence denied that he had not made any appeal to the voters on the ground of race, community or religion. In cross-examination, even though the first respondent has stated that he knew one Rajagopalan, President of the Brahmins'

Association in Tiruchy, he denied that he had ever given any statement as contained in Exts. P-2 and P-3. He had categorically stated that he had never approached anyone for this purpose. Considering the aforesaid facts and the evidence on record, the allegation that the first respondent made an appeal to Brahmin voters to vote for him and published a statement that the Brahmins had agreed to support him and also sought for the support on the ground of race, community and religion cannot be accepted. The newspaper reports cannot be taken as a piece of evidence and it is only a second hand secondary evidence as held by the Supreme Court. Unless there is substantial and direct evidence in respect of these allegations, the reports contained in the newspaper cannot be taken as a piece of evidence to support any such allegation as said hereinbefore.

21. Sec. 123 of the Act deals with corrupt practice. Sec. 123(3) of the Act provides that any appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols such as the national flag or the national emblem for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of the candidate. Sub-section 3-A of the Act provides the promotion of, or attempt to promote, feelings of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

22. In *Harcharan Singh v. Sajjan Singh*, reported in A.L.H. 1985 S.C. 236, the Supreme Court held as follows:—

“While insisting on standard of strict proof, the Court should not extend or stretch this doctrine to such an extreme extent as to make it well high impossible to prove an allegation of corrupt practice. Such an approach would defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process. See the observations in the case of *Rani Bharan Yadav v. Thakur Muneshwar Nath Singh* Civil Appeal No. 892 (NCE) of 1980 : (reported in AIR 1985 SC 24).”

23. In *Manmohan Kalia v. Sibi Yash*, reported in A.I.R. 1984 S.C. 1161, the Supreme Court observed as follows:—

“It is now well settled by several authorities of this Court that an allegation of corrupt practice must be proved as strictly as a criminal charge and the principle of preponderance of probabilities would not apply to corrupt practice envisaged by the Act because if this test is not applied a very serious prejudice would be caused to the elected candidate who may be disqualified for a period of six years from fighting any election, which will adversely affect the electoral process. . . . A News item without any further proof of what had actually happened through witnesses is of no value. It is at best a secondhand secondary evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible.”

24. In the instant case, the petitioner has not satisfactorily established that the first respondent had committed an offence within the meaning of Sec. 123(3A) of the Act. Even the witnesses examined on behalf of the petitioner in this

behalf were not in a position to speak that such publication was either by the first respondent or with his consent.

24A. With reference to the allegations that the first respondent had committed corrupt practice of bribery of offering and paying Rs. 10,000 to each of the two independent candidates viz., A. Arockiasamy and A.S.M. Marianallu, to declare themselves as retired in favour of the first respondent and that the first respondent got appointed Cong-I party District Office Bearers as election agents of the said retired candidates to promote his prospects stealing a march over other candidates and also that Ka. Selvaraj, a dummy candidate for the first respondent from Cong-I party withdrew his nomination and had been appointed as election agent for A. Arockiasamy, an independent candidate and that one S. Selvaraj, one of the office-bearers of the District Secretaries of the Cong-I party had been appointed as election agent for A. S. M. Marianallu, an independent candidate are concerned, it is the case of the first respondent that he had never offered and paid Rs. 10,000 as alleged to one Arockiasamy and A. S. M. Marianallu for the avowed purpose stated hereinabove and also denied the other averments. The petitioner as PW-1 had stated that the first respondent had made these independent candidate to retire from contesting by paying Rs. 10,000 each and nominated Cong-I Party office bearers as their election agents. The first respondent had not only denied such an allegation in the pleadings but also in evidence denied the same. Likewise, the petitioner had averred that the first respondent had paid a sum of Rs. 10,000 to one Thathu Adaikkapattar. The petitioner had also averred that one Suba Sonu President of the Cong-I youth wing, was appointed as election agent for Thathi Adaikkapattar. The said allegation was also denied and the evidence let in this behalf by the petitioner was denied by the first respondent. As there is no satisfactory evidence in this behalf, the allegation that the first respondent had made independent candidates to withdraw and also to appoint some of the office bearers of the Cong-I party as election agents of those persons are not sustainable.

25. Equally, the allegation that the first respondent had pressed into his service four election agents and thus created unequal balance as between the contesting candidates is not sustainable in the absence of any proof to that effect. The allegation that those agents collected ballot papers from the electors and cast them in favour of the first respondent and thereafter dropped into the ballot boxes is not substantiated by any acceptable evidence.

26. With reference to the allegation that the first respondent had exceeded the prescribed limit of the election expenses, the petitioner alleged that the statement of returns lodged by the first respondent contains incorrect particulars. The first respondent denied the said allegation. It is the case of the first respondent that he had not committed any corrupt practice as stipulated in Sec. 123 (6) of the Act. The first respondent had stated that he had complied with Sec. 77 of the Act by lodging an account of all election expenses with the District Election Officer. It is averred that there was no statement that the first respondent had incurred or authorised any expenditure in contravention of Sec. 77 of the Act. It is in this connection, he has given particulars of the expenses that are said to be incurred by the first respondent and according to the petitioner the first respondent had expended about a total sum of Rs. 3,02,000/-. The particulars of the expenses are given in Schedule II to the election petition. However, the first respondent has in reply averred that the particulars given in Schedule II to the election petition are contrary to the figures mentioned in the statement of accounts submitted to the Returning Officer or to the District Election Officer.

27. It is the specific plea of the petitioner that the first respondent had expended for the purpose of election beyond the prescribed limit and as such contravened the provisions of Sec. 77 of the Act. However, such a plea was denied by the first respondent. The petitioner in his evidence in Chief-examination has stated that the first respondent had incurred

expenses more than the prescribed limit of Rs. 1,50,000/-. However, in cross-examination, he has admitted that there was no evidence that the payments as given in Schedule II to the election petition, were actually made. The first respondent, in chief-examination, has spoken to the fact that he has spent about a sum of Rs. 55,000/- and in cross-examination he was questioned about the entries made in the accounts furnished by him. Though the first respondent adduced that he maintained election expenses account in accordance with Sec. 77 of the Act read with Rule 86 of the Conduct of Election Rules, the first respondent was examined in cross meticulously with each and every item of expenditure by him as contained in the election expenses submitted by him. In fact, the first respondent had adduced that the cost of advertisements must have been included in the election expenses. The first respondent had also spoken to the fact that he had purchased list of electoral rolls for certain constituencies and also explained that he had supplied free copies of electoral rolls with reference to area included in his constituency. Of course, he has stated that he was not in a position to state for which constituency he has purchased the voters' list. Though the petitioner has meticulously cross-examined the first respondent in respect of each and every item of expenditure, he was not able to make out substantially with reference to the amount that had been spent in contravention of Sec. 77 of the Act.

28. It was the specific case of the petitioner that various expenses incurred by the first respondent were not included in Ex. R-1 and consequently Ex. R-1 was not in accordance with the provisions of the Act and the Rules and as such cannot be treated as accounts. It was also stated that Schedule II annexed to the petition contained all expenses incurred by the first respondent. Even if the petitioner had averred as such, he was not in a position to substantiate that the first respondent had incurred expenditure as set out in Schedule II to the election petition. There was a specific denial on the part of the first respondent with reference to the allegation made by the petitioner in this behalf. It was the case of the first respondent that there was no evidence to show that the first respondent had exceeded the limits and even if there were small admissions that would not affect the first respondent since the burden of proof was on the part of the petitioner to establish the allegations made to the effect that the first respondent had expended beyond the prescribed limits. The second respondent had stated that he had no personal knowledge about the first respondent exceeded the prescribed limits of election expenses. According to the second respondent, the first respondent had submitted his election expenses and as per the accounts the first respondent had spent only Rs. 55,675.42 and that the said accounts were forwarded to the Election Commissioner as per the rules.

29. In *Azhar Hussain v Ravi Gandhi* reported in A.I.R. 1986 SC, 1253, the Supreme Court has elaborately discussed with reference to the proof that is required in order to establish the corrupt practice. The mere allegation without disclosing all the material facts and without disclosed the cause of action would not be sufficient to substantiate the corrupt practice. If the facts stated do not disclose any cause of action, the election petition may be summarily dismissed, in the exercise of the powers under the Civil Procedure Code. It was also held that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. The Supreme Court has also observed that all those which are essential to clothe the petition with the complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Sec. 83(1) (a) of the Act and an election petition, therefore, could be and must be dismissed if it suffers from any such vice. The Supreme Court further observed as follows :—

"The fact that Section 83 does not find a place in Section 86 of the Act does not mean that powers under the CPC cannot be exercised." (Para 9)

"There is thus no substance in this point which is already concluded against the appellant in *Hardwar Lal v. Kanwal Singh* (1972) 2 SCR 742 : (AIR 1972 SC 515) wherein this Court has in terms negated this very place in the context of the situation that material facts and particulars relating to the corrupt practice alleged by the election petitioner were not incorporated in the election petition as will be evident from the following passages extracted from the judgment of A. N. Ray, J. who spoke for the three-judge Bench :

"The allegations in paragraph 16 of the election petition do not amount to any statement of material fact of corrupt practice. It is not stated as to which kind or form of assistance was obtained or procured or attempted to obtain or procure. It is not stated in what manner the assistance was for the furtherance of the prospects of the election. The gravamen of the charge of corrupt practice within the meaning of Section 123(7) of the Act is obtaining or procuring or abetting or attempting to obtain or procure any assistance other than the giving of vote. In the absence of any suggestion as to what that assistance was the election petition is lacking in the most vital and essential material fact to furnish a cause of action. Counsel on behalf of the respondent submitted that election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasized that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure 1908 to the trial of the suits. A suit which does not furnish cause of action can be dismissed." (para 10)

"In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders, in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in *Samant's case* (1969) 3 SCC 238 : (AIR 1969 SC 1201) has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also in *Udhav Singh's case* (1977), 1 SCC 511; (AIR 1977 SC 744) the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail" (para 11)

"In view of the doctrine laid down in *Nihal Singh's case* (1970) 3 SCC 239 (supra) as early as in 1970; the High Court was perfectly justified in

taking the view that no cause of action was made out. For, in the absence of material particulars as to who had printed, published or circulated the pamphlet, when, where and how it was circulated and which facts went to indicate the respondent's consent to such distribution, he pleading would not disclose a cause of action." (para 38)

30. With reference to the allegation that the first respondent and his agents hired and procured vehicles for conveyance of he electors to the polling station and back to their places and thereby committed the corrupt practice specified in Sec. 123(5) of the Act and to the particulars given by the petitioner in schedule III annexed to the election petition, the first respondent denied all the averments by stating that the first respondent or his agents and workers never hired or procured vehicles for conveyance to the polling stations and thereby committed any corrupt practice. The first respondent specifically denied that the facts specified in Schedule III are all false. It was also stated that the photographs filed by the petitioner do not in any manner establish that the first respondent had hired or procured vehicles for conveyance of any voter. The second respondent has averred that he has no personal knowledge about the first respondent providing free conveyance to the electors to the polling station and back and there was no complaint in this behalf and that the allegation was only an after thought.

31. The petitioner in his evidence stated that the first respondent had hired vehicles and provided conveyance to the voters to the polling stations and also back to their houses. The petitioner further stated that Exts. P-6 to P-11 were the photographs showing that the first respondent had hired vehicles to transport the voters to the polling stations and back to their residence and that the vehicles used therein belonged to L.A. Group Company, Bavaria Bottling Company. However, the petitioner in cross-examination admitted that there was no evidence, apart from the photographs, to show that the first respondent or his agents had hired those vehicles. The petitioner was not able to name any of the agents who hired those vehicles. The petitioner had also adduced that since there is a Congress flag with "hand" symbol in the vehicle, he expected that an inference that the candidate was the financier of these vehicles has to be made. The petitioner has adduced that the vehicles were used on 24.11.1989. As against the interested testimony of the petitioner as P.W.1, the first respondent in his evidence stated that he has not arranged for any vehicles and that he did conduct election campaign in accordance with the laws and rules of the election. The first respondent has also stated that the first respondent or his sons own 4 or 5 cars and that the first respondent was not able to recollect his Car No. and that the Car Nos. found in the list in Ex. R.1 belonged to his sister, his brothers and that were utilised in the election campaign. The first respondent specifically stated that all the vehicles found in the list Ex. R-1 belonged to his sons and sisters. It is in this connection, learned counsel for the petitioner represents that in case where it is not possible to give direct evidence, the available evidence is sufficient to infer the alleged corrupt practice. However, having alleged specifically that the first respondent had hired vehicles for the purpose of conveyance to the voters to the polling booths the petitioner should have proved to the satisfaction of the court that the vehicles had been used for the purpose of carrying voters in the booths etc. In this case, there are allegations against allegations by both parties and the evidence against interested evidence by the respective parties. It is in these circumstances the allegations made in this behalf by the petitioner were not substantiated to the satisfaction of the Court by adducing acceptable evidence by the petitioner; except the ipse dixit of the petitioner. It was also stated on behalf of the first respondent that there was no evidence that the vehicles said to have been used by the first respondent, as alleged by the petitioner, was with the consent of the candidate himself. In the absence of any such evidence the allegation is not sustainable.

32. In R. M. Seshadri v. G. Vasantha Pai and others reported in A.I.R. 1969 S.C. 692, the Supreme Court considered that there should be connection of the returned candidate

against whom the corrupt practice was alleged with the use of the cars and held that the rest were matters of evidence which did not require to be pleaded and that the plea could always be supported by evidence to show the source from where the cars were obtained, who hired or procured them and who used them for the conveyance of voters. The Supreme Court also observed that it is true that better particulars can only be given by the party, only where better particulars are required and circumstantial chain of evidence was sufficient to show the connection between the candidate and the use of the cars for the conveyance of voters.

33. In Dharmesh Prasad Verma v. Falyazal Azam, reported in A.I.R. 1984 SC 1516, the Supreme Court observed that the requirement of law in regard to corrupt practice under Sec. 123(5) in that in addition to proving the hiring or procuring of any vehicle or vessels for the carriage of voters to and from any polling station, it should also be proved that the electors used the vehicle or vessel free of cost to themselves.

34. In Jashbhai Chunibhai Patel v. Anverbeg A. Mirza reported in A.I.R. 1969 SC 586, the Supreme Court observed as follows:—

"This section defines one of the corrupt practices and it consists of the hiring and procuring whether on payment or otherwise of any vehicle. This hiring and procuring must be by a candidate or his agent or by any other person with the consent of the candidate or his election agent and the hiring according to the section must be for the free conveyance of any elector other than the candidate himself or members of his family or his agent to and from any polling station. It will, therefore, appear that the section requires three things, (1) hiring or procuring of a vehicle, (2) by a candidate or his agent etc. and (3) for the free conveyance of an elector. It will be noticed that the section also speaks of the use but it speaks of the use of such vehicle which connects the two parts, namely, hiring or procuring of vehicle and the use. The requirement of the law therefore is that in addition to proving the hiring or procuring and the carriage of electors to and from any polling station, it should also be proved that the electors used the vehicle free of cost to themselves. In other words the electors, if they have to perform the journey by hired vehicle must pay for its hire themselves. They cannot be taken in a hired vehicle free of cost to themselves. In the same way if a procured vehicle is used. The journey of the elector must be paid for by him. If a candidate hires or procures a vehicle for free conveyance of the electors that also is perhaps a corrupt practice but that aspect need not be considered here. The language seems capable of that interpretation though we express no final opinion." (para 10).

35. In Shri Umed v. Raj Singh and others reported in A.I.R. 1975 S.C. 43, the Supreme Court held as follows:—

"It must be noted that the mere conveyance of voters to the polling station/free of charge does not amount to a corrupt practice. If, for example, a sympathizer or supporter of a candidate carries voters free of charge in a vehicle to the polling station it will not amount to a corrupt practice unless it is shown that the vehicle was procured by that sympathizer or supporter with the consent of the candidate or his election agent." (para 22).

36. In the instant case, except the ipse dixit of the petitioner, there was no other supporting evidence to prove the allegations. The petitioner has not endeavoured to establish that the vehicles were used for the carriage of voters free of charge either by the owner or with the consent of the

owner. In the absence of satisfactory evidence, the allegation cannot be considered as sustainable. Accordingly, the same is not sustainable. For all the foregoing reasons, this issue is found against the petitioner.

37. **ISSUE NO. 6** :—With reference to the allegation that there was irregularity in the polling process, the petitioner has alleged that there was non-compliance of provisions of the Representation of People Act, 1951, the rules and the orders made therein, by committing breach of the existing laws as set out in Schedules IV, V and VI appended to the election petition. However, the first respondent denied the averments contending that there had been no non-compliance of the provisions of the Act, the rules and orders made therein. Equally, the allegation that there was a breach of the existing laws was also denied as false. It was stated that there was no reference to the Act or the rules or the orders and the laws, which had been allegedly violated. It was stated that the averments in respect of the matters relating to Schedules IV, V and VI of the petition were irrelevant and that there was no allegation that the acts alleged therein constituted non-compliance of the provisions of the Act. The second respondent contended that the said allegations were all general in nature and that the second respondent does not concern with this. In support of the aforesaid allegations, the petitioner produced Exts. P-12 to P-20 photographs and also other documents viz., Ex. P-32, the complaint, Ex. P-33 the copy of the election petition and the telegram Ex. P-34. Exts. P-12 to P-20 are photographs disclosing cut-outs and arches that were made. In fact, Ex. P-32 is a complaint by the election petitioner before the Returning Officer, wherein, he has alleged that the first respondent had erected arches in certain places in Tiruchy-Pudukottai highways road and that the said arches caused obstruction on the highway and if these obstructions were not removed immediately, the general public would have to face irreparable loss of human life and property and that the said obstruction on the highway cause nuisance to lawful users and was in violation of Sec. 133 (1)(a) of Cr. P. C. etc. In Ex. P-33 which is styled as an election petition filed by the petitioner before the Returning Officer, the petitioner made complaint with reference to the existence of arches cut-outs on the highway and also pointed out with reference to the use of a railway building near Tiruchy Junction and also pointed out that the first respondent was a railway contractor and had taken contract at Tiruchirapalli Airport works, Railway Bridge and Golden Rock Railway hospital etc. In evidence, the petitioner has spoken about the fact that the first respondent had erected one pandal in front of the building owned by a railway and also had erected cut-outs on the road and also painted his election symbol, his name board and also painted his name and symbol at a permanent arch at Thillainagar and in Srirangam Polling Station etc. In cross-examination, the petitioner has stated that the petitioner had not pleaded that any such violation has materially affected the result of the election. However, the petitioner has explained that he has given all the particulars with reference to the violation. The first respondent in his evidence has stated that he has nothing to do with the arches, Exts. P-12 to P-20 and also stated that the party members, who are interested in the election had put up these arches and that the first respondent has nothing to do with reference to arches, banners etc. The second respondent in his evidence stated that the second respondent was not aware of the alleged complaint given by the petitioner on 23-11-1989. The second respondent also deposed that there were no reports either from the public or from the consumers regarding the objections made by the petitioner. Though the petitioner has endeavoured his best to establish by producing Exts. P-12 to P-20 photographs to disclose there were cut-outs and arches, it is lacking in evidence to substantiate whether such arches and cut-outs were put up by the first respondent himself or by any other person who is interested in the first respondent and erecting such cut-out would amount to violation of any of the provisions of the Act and that would constitute an offence which would materially affect the result of the election. In the absence of any such proof, the allegation in this behalf is not sustainable.

38. The petitioner has also alleged that the first respondent, his agents and workers with his consent committed electoral offences specified in Sec. 130(3) of the Act by

distributing booth slips to the electors with "hand" symbol i.e., election symbol of the first respondent issued at Government higher Secondary School, Lalgudi Polling Station and these slips were filed by the petitioner as Exts. P-22 to P-24. However, the first respondent denied the said averment and also stated that there was no such allegation that as a result of the same the election had been materially affected by violation of Sec. 130(e) of the Act and also contended that Exts. P-22 to P-24 were not in any manner evidence the allegation and that they inadmissible in evidence.

39. Sec. 130 of the Act provides that no person shall, on the date or dates on which a poll is taken at any polling station commit any of the acts specified therein within the polling station or in any public or private place within a distance of one hundred metres of the polling station namely:

- (a) canvassing for votes; or
- (b) soliciting the vote of any elector; or
- (c) persuading any elector not to vote for any particular candidate; or
- (d) persuading any elector not to vote at the election; or
- (e) exhibiting any notice or sign (other than an official notice) relating to the election.

However, Sec. 130 (2) provides that any person who contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to two hundred and fifty rupees. Sec. 130(3) provides that an offence punishable under this section shall be cognizable.

40. The first respondent has rightly contended that there was no evidence that the first respondent or his agent and workers with his consent committed electoral offences as specified in Sec. 130(e) of the Act, by distributing booth slips to the electors with the notice or sign thereon etc. Though the petitioner has marked Exts. P-22 to P-24, the petitioner was not in a position to establish that the first respondent committed such an offence. The petitioner has not mentioned the persons who distributed and how these persons were connected with the first respondent. However, the petitioner has not challenged that, as a result of any such electoral offence, the result of the election had been affected. Even assuming that there was distribution of election booth slips, whether such distribution was made with the consent of the first respondent is a matter for consideration and was also not established to the satisfaction of the Court. In these circumstances, it cannot be held that the first respondent committed any electoral offence violating the provisions contained in Sec. 130(e) of the Act.

41. With reference to the allegation contained in paragraph (1) viz., that the first respondent and his agents and workers with his consent committed the electoral offence specified in Sec. 127A of the Act, by publishing election pamphlets or posters, Sec. 127A of the Act provides that no person shall print or publish or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and addresses of the printer and the publisher thereof. Sub-section (2) of the said section provides that no person shall print or cause to be printed any election pamphlet or poster (a) unless a declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom he is personally known, is delivered by him to the printer in duplicate and (b) unless, within a reasonable time after the printing of the document, one copy of the declaration is sent by the printer, together with one copy of the document—(i) where it is printed in the capital of the State, to the Chief Electoral Officer; and (ii) in any other case, to the District Magistrate of the District in which it is printed. Sub-section (4) of the said section provides that any person who contravenes any of the provisions of sub-section (1) or sub-section (2) shall

be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees or with both.

42. The petitioner alleged that (i) to promote his election prospects, the first respondent published advertisement in newspaper publishing a letter allegedly written by a matinee idol Rajinikanth, (ii) that the election pamphlet was distributed on 21-11-1989 without the printer's name and the said pamphlet was allegedly issued by National Students Union of India, (iii) that full page advertisement was published in Dhinamalar dated 19-11-1989 with the information about the public meeting of Selvi Jayalalitha, (iv) that election pamphlet in favour of the first respondent said to be issued by K. C. S. Sami, (v) that an advertisement in Dhinamalar dated 23-11-1989 issued by the first respondent appealing notes to cast vote for him on the day closed for canvassing. However, the first respondent specifically stated that he had not published any of the items mentioned in sub-paragraphs (i) to (v) in paragraph (i) and also stated that none of these documents amount to election pamphlets or posters. It was also stated that no facts have been alleged to show that there was any violation of Sec. 127-A of the Act. It was also stated that the crux of the offence under the said section is an election pamphlet or poster does not bear on its face the names and addresses of the printer and the publisher thereof. It was also stated that these ingredients were absent and there was no evidence to the satisfaction of the Court. The second respondent averred that the second respondent was not in any way concerned with the said averments. In support of the aforesaid contention, the petitioner marked Exts. P-24 to P-27. Exts. P-24 and P-25 were published in the Tamil Dailies, allegedly written by Rajinikanth. Exts. P-26 to P-28 were published in the name of third person. Exts. P-29 to P-31 are advertisements. There was no declaration from the person who made the advertisements and the advertisements were not approved by the Collector and the declaration to that effect was not available. The petitioner states in evidence that the advertisement in Dhinamalar dated 17-11-89 marked as Ex. P-24 is a letter written by the Matinee Idol Rajinikanth to the first respondent. Likewise, the advertisement on 23-11-89 marked as Ex. P-24 in Malaimurasa also bears the letter written by Rajinikanth. These two advertisements were not made as per the provisions contained in Sec. 127-A of the Act and the petitioner has also adduced that the pamphlets Exts. P-26 to P-28 were issued by the National Students Union of India and by M. G. M. Sami respectively in favour of the first respondent, which do not bear the names of the printers and publishers. The petitioner has also adduced that the advertisement made in Dhinamalar dated 19-11-89 marked as Ex. P-27 contains "Hand" symbol, which prejudices the election of the petitioner. Likewise, Exts. P-30 and P-31 were advertisements made on 24-11-1989 and 5-11-1989 respectively in violation of the law in this behalf. Though the petitioner has stated that the said advertisements were published by the first respondent, he was not in a position to establish by any acceptable evidence to the effect that the advertisements were made by the first respondent. It may be in favour of the first respondent, but there was no acceptable evidence to show that it was made by the first respondent. The first respondent in cross-examination categorically stated that the letters Exts. P-24 and P-25 were not written to the first respondent and that the first respondent has nothing to do with these advertisements. The first respondent has categorically stated that he had no connection

whatsoever with reference to these advertisements. So far as Exts. P-29 and P-30 are concerned, it was stated to be published by the first respondent. However, it was contended by the learned counsel appearing on behalf of the first respondent that there was no violation of the provisions contained in Sec. 127-A of the Act. In fact, the documents referred to as pamphlets were not pamphlets within the meaning of Sec. 127-A of the Act and that cannot be a ground for setting aside the election and there was no allegation that the result of the election as a result of this was materially affected. In the absence of any corroborative evidence either from the reporter or from the persons who made publication or from the press who made such priting to show that the first respondent had any connection whatsoever with reference to the publication of the advertisements as well as pamphlets, the interested testimony of the petitioner cannot be taken as a basis to come to the conclusion that the first respondent had committed any offence within the meaning of Sec. 127-A of the Act. This issue is answered against the petitioner.

43. Considering the allegations of the parties herein and the evidence adduced on behalf of the parties and the documents marked by the respective parties, the petitioner was not in a position to substantiate that the first respondent had subsisting contracts on the date of the nomination with any of the Governmental Departments as alleged by the petitioner and consequently it cannot be said that the first respondent had suffered any disqualification as contemplated under Sec. 9A of the Act. Likewise, the petitioner was not in a position to establish that the first respondent had committed any corrupt practice as contemplated under the provisions contained in Sec. 123 of the Act for various reasons set forth hereinabove. Having regard to the findings given with reference to the various allegations made by the petitioner as against the first respondent in respect of the disqualification, corrupt practice, electoral offence etc., the election petition deserves to be dismissed, though the election petition is maintainable in law for the reasons set forth hereinabove.

44. ISSUE No. 7 :-In view of the above findings, the election petition deserves to be dismissed and accordingly the same is dismissed. However, there will be no order as to costs.

Index : Yes/No

MRV

Order in Election Petition No. 1/1990

Delivered on 2-7-92

Witness the Hon'ble Miss KANTAKUMARI BHATNAGAR, Chief Justice at Madras aforesaid, this the 2nd day of July, 1992.

Assistant Registrar, Original Side-II

Certified to be a true copy.

Dated this 1st day of October, 1993.

Sd/-

Court Officer (O.S.)

